

MINUTES
MALIBU CITY COUNCIL
SPECIAL MEETING
JULY 22, 2003
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 6:45 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeff Jennings and Andrew Stern

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Vic Peterson, Building Official; Ed Knight, Planning Manager; Scott Albright, Senior Planner; and Lisa Tent, Recording Secretary

FLAG SALUTE

Building Official Peterson led the Pledge of Allegiance.

CLOSED SESSION REPORT

Public Comment on Closed Session Items

None.

City Attorney Hogin reported that the meeting convened at 5:00 p.m., at which time the Council recessed to a closed session and discussed both the items listed on the posted agenda, but took no reportable action.

APPROVAL OF AGENDA

MOTION Councilmember Stern moved and Mayor Pro Tem Barovsky seconded a motion to adjourn the meeting in memory of those who lost their lives in the Santa Monica Farmers Market accident and in memory of Malibu resident Bill Dowey.

City Attorney Hogin requested the Council continue Closed Session Item No. 1, involving the Streinsand Center, to Thursday, July 24, 2003 at 5:30 p.m.

AMENDMENT

The maker and seconder of the motion amended the motion to continue Closed Session Item No. 1 to July 24, 2003.

The amended motion carried unanimously.

REPORT ON POSTING OF AGENDA

Recording Secretary Tent reported that the agenda for the meeting was posted on July 18, 2003.

ITEM 1A. PUBLIC COMMENTS

None.

ITEM 1.B. COUNCIL COMMENTS

Councilmember Stern thanked City Manager Lichtig and Maintenance Manager Richard Calvin for their quick response to a recent traffic accident, which occurred on Pacific Coast Highway at Malibu Creek. He stated it was a successful attempt, not only to help the people involved, but also to open the highway in record time.

ITEM 2 PUBLIC HEARING

A. Malibu Bay Company Development Agreement– Applicant: Malibu Bay Company; Owner: Malibu Bay Company; Location: Civic Center, Trancas Canyon, and Point Dume areas

Staff recommendation: If the City Council chooses to approve the Development Agreement and all associated items, it should:

- 1) Adopt Resolution No. 03-31 certifying the Environmental Impact Report;
- 2) Adopt Resolution No. 03-32 approving applicable General Plan Amendments, as related to the proposed Development Agreement;
- 3) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 249 amending Malibu Municipal Code (MMC) Chapter 17.42, creating West Zuma Residential Overlay District and Trancas Canyon Residential Overlay District;
- 4) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 250 adding MMC Chapter 17.43, creating the Town Center Overlay District and West Zuma Commercial Overlay District;
- 5) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 251 approving certain amendments to the Zoning Map, as related to the proposed Development Agreement;
- 6) Adopt Resolution No. 03-33 approving the remaining miscellaneous entitlements as related to the proposed Development Agreement;
- 7) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance 252 approving the proposed Malibu Bay Company Development Agreement;
- 8) Adopt Resolution No. 03-43 calling and giving notice of the holding of a Special Municipal Election to be held on Tuesday, November 4, 2003, for the submission to the qualified voters a proposed ordinance.
- 9) Adopt Resolution No. 03-44 requesting the Board of Supervisors of the County of Los Angeles to consolidate a Special Municipal Election to be held on November 4, 2003, with the Statewide General Election to be held on the date pursuant to Section 10403 of the Elections Code;
- 10) Adopt Resolution No. 03-45 providing for the filing of rebuttal arguments for city measures submitted at municipal elections;

- 11) adopt Resolution No. 03-46, setting priorities for filing written arguments regarding a city measure and directing the City Attorney to prepare an impartial analysis;
- 12) direct Staff to schedule second reading and adoption of Ordinance Nos. 249, 250, 251, and 252 on July 28, 2003.

City Attorney Hogin stated the final draft Development Agreement memorializing the changes that have been made as a result of the hearings was not included in the staff report. She explained the before the Council was consideration of the Environmental Impact Report (EIR), consideration of the Final Development Agreement, ordinances and resolutions, and resolutions necessary for the election.

She recommended the Council take no action in order for the final resolutions and ordinance to be prepared and reviewed by the Council and the public. She recommended, if the Council decides to proceed and is inclined to call an election for November, 2003, it adjourn the meeting to Thursday, July 24, 2003, at 6:30 p.m. She reminded the Council that, according to CEQA analysis, it is allowed to make modifications to a project, provided the changes are not likely to have significant impacts.

Senior Planner Scott Albright gave a brief summary of the Planning Commission's recommendations on Plan B, stating the Commission held a duly noticed public hearing on July 21, 2003 and reviewed the proposal. He reported the Planning Commission's comments and recommendations as follows:

- 1) There was general Planning Commission support for Plan B if uncoupled from Plan A;
- 2) That more time should be taken to study Plan B to ensure grants and other means of funding are available to purchase the Chili Cook-Off site;
- 3) A recommendation that this not go before the voters in November, but rather in July 2004, in order to better study Plan B;
- 4) The Planning Commission could not certify the changes noted as being consistent with the City's General Plan;
- 5) The Planning Commission does not know if the Trancas Conservation Easement is consistent with the General Plan until it is brought before the Planning Commission for its review;
- 6) The Planning Commission cannot support Plan A even modified, so support of Plan B could not be given unless uncoupled from Plan A;
- 7) The Commission is concerned with the 36-month timeline to purchase the Chili Cook-Off site.

Michael Klein, Friends of Malibu Urgent Care, asked the Council to seriously consider favorably the Development Agreement with respect to the urgent care.

Stan Byrnes stated he was strongly opposed to the Trancas Commercial development. He stated his concerns were the number of and locations of entrances for delivery and garbage trucks on the site, and the size of the proposed structure.

Georgiana McBurney urged the Council to make a good decision with respect to the proposed Development Agreement.

Patt Healy urged the Council to be prudent and not certify the EIR at this time.

Helen Eisenburg stated she was in favor of Plan B; however, she was concerned with the amount of \$25 million needed to buy the Chili Cook-Off site, and the timeframe in which it would need to happen.

Steve Uhring stated the Malibu Bay Company wins no matter which Plan the Council decides to approve. He reminded Mayor Kearsley of defining the Development Agreement as a “crap shoot”. He stated the City of Malibu and its citizens deserve better.

Lucille Keller, Malibu Township Council, stated Plan B should be considered as a separate project and required to have it's own EIR, or in the least, an amendment to the Final EIR. She stated her opposition to any proposal of a collector treatment plant anywhere in the city, and the need to have a Local Coastal Program for the City of Malibu in place before the Development Agreement is approved.

Marlene Matlow, Friends of Malibu Urgent Care, stated there is always the need for development and feels enough give and take has taken place by both parties. She stated she is in favor and supports Plan B, and hopes the endowment for the urgent care is still on the table.

Efrom Fader, Malibu Township Council, stated his concerns with the fast changing developments of the negotiations, and the limited time to review. He stated his concerns with the proposed projects significant increase in density and the possibility of any delay in funding, which would be needed to purchase the Chili Cook-Off site. He urged the Council to accept the recommendations of the Planning Commission, uncoupling Plan B from Plan A, and to get more information prior to making a decision.

Sandra Genis, Technical Consultant for Malibu CAN, urged the Council to slow the process down. She stated the need to re-circulate the draft EIR due to recent changes and its original inadequacies. She stated concerns with the proposed FAR of .25 and also the impacts to the Chili Cook-Off site.

Councilmember Stern asked Ms. Genis if she was a lobbyist. Ms. Genis responded no, she reviews EIRs. Councilmember Stern asked Ms. Genis whom she was representing. Ms. Genis responded Malibu CAN.

Suzanne Guldemann indicated opposition to approving the EIR and placing the MBC Development Agreement on the ballot until all options have been explored. She encouraged the Council to listen to the Planning Commissions recommendations.

Marcia Hanscom, Sierra Club and the Wetlands Action Network, urged the Council to deny approval of the EIR, claiming it was full of uncertainties and inadequacies.

She stated the need for a new EIR or subsequent EIR to be prepared and re-circulated, due to additional impacts. She asked why the City of Malibu should pay for land that would ultimately help the applicant out of his current violations regarding sewage disposal.

Councilmember Stern stated he was not aware the applicant was in violation, and asked if the applicant had been given a notice of violation. Ms. Hanscom responded yes.

Beverly Hammond, Point Dume Community Services District, stated she was in favor of adopting Plan B of the MBC Development Agreement, and urged the Council to move forward.

Don Maclay stated he hoped the Council would move forward, continue the course it is on and make a decision on the Development Agreement.

Ryan Embree questioned the fair market value of the Chili Cook-Off site and suggested the applicant finance a portion of the funding needed to buy the site. He urged the Council to listen to the recommendation of the Planning Commission regarding decoupling Plan B from Plan A.

Steve Hotchkiss stated his concern with the process and indicated he was in agreement with the Planning Commission's recommendations. He urged the Council to continue to negotiate for the Riders and Ropers site.

Max Gail stated his concern with the appearance of rushing to a decision; however, stated the road was long but the end was near. He personally thanked everyone involved stating the process has served the City well.

Patricia Greenwood thanked the Council for their hard work and effort stating the recent changes in the Development Agreement show the signs of progress in the negotiations.

Rich Davis stated, as a resident of Malibu for 42 years, there should be development on the Chili Cook-Off site and other Civic Center area properties, and that something is better than nothing.

Ted Vaill stated his concerns with the density of development at Trancas, increased traffic and coupling Plan B with Plan A. He stated concern with the community having a sense that there was a rush to judgment on the decision.

Norm Haynie stated his concern with the appropriate timelines needed to secure the funding to purchase the Chili Cook-Off site, and suggested a provision be added to the agreement, which would require the applicant to do everything possible to help facilitate the purchase. He expressed his appreciation to the City Manager, City Attorney and Barbara Cameron for this opportunity.

Bob Purvey urged the Council to continue the process but expressed concern with linking Plan A to Plan B, and with the type of use being suggested on the Chili Cook-Off site. He recommended any proposed facility be state of the art in technology.

RECESS Mayor Kearsley called a recess at 8:16 p.m. The meeting reconvened at 8:26 p.m. with all Council members present.

Rich Fox expressed concern with the timeframe for review and possible implications. He stressed his concern with the Development Agreement, that Plan A would possibly be approved by default and that there is no incentive for the applicant to help facilitate Plan B.

David Kagan stated there would never be a development agreement that is perfect; however, he is certain the Council will make the best decision for the community as a whole. He added if there is a compelling reason to place this on the ballot in November, than it should happen; however, if there are items that are not fully vented, the Council should decide to hold off.

Lloyd Ahern thanked the Council for its hard work and urged everyone to look at what can be done, not what cannot.

Paul Grisante stated the time had come to put the Development Agreement on the ballot and let the citizens make the decision. He stated he was confident that the citizens of Malibu would make the appropriate decision for the community.

Anne Hoffman stated she was in favor of Plan B and urged the Council to approve the Development Agreement.

Councilmember House asked City Manager Katie Lichtig to discuss the possible funding sources for the Chili Cook-Off site purchase. City Manager Lichtig stated the City had received overwhelming and swift response from many state-funding agencies indicating their conceptual support for the project. She explained the concept of a centralized on-site wastewater and storm-water treatment facility. She informed the Council that there were grant application deadlines in January and March for some funding options, and these applications would be well supported by a vote of the people. She stated the City had received conceptual support in the amount of \$5 million from various funding agencies and also the support of California Attorney General Bill Lockyer.

Mayor Kearsley read a letter of support from Attorney General Lockyer.

Councilmember House asked if the Malibu Bay Company was guaranteed any entitlements if the Development Agreement was defeated. City Attorney Hogin responded no and explained that all entitlements go into affect only if the voters approve the Development Agreement. Councilmember House clarified that any potential air pollution identified in the EIR would be related to construction. Laura Kaufman of Envicom responded that is correct, with the exception of three components of air emission quality, which will remain at a significant level.

Councilmember House asked City Attorney Hogin, if it is the purpose of an EIR to provide an exhaustive study. City Attorney Hogin responded the purpose of an EIR was as an informative document, which identifies potential impacts. Councilmember House asked for more information on the quality of water, which would be produced by the proposed wastewater treatment facility. Environmental and Community Development Department Director Peterson responded saying the very least the City would consider is Title 22, State Standard for Human Contact. He stated water quality would also be subject to a Regional Water Quality Control Board review.

City Attorney Hogin reminded the Council that the Development Agreement only makes the assumption of purchasing the Chili Cook-Off site, and not of any proposed facility.

Councilmember House stated, for the record, all negotiations for the Development Agreement have been conducted 100% in an open forum. City Attorney Hogin agreed the only communications to Council have been done so through staff reports. Councilmember House stated this development agreement has been a vision from the beginning, that she likes the changes being made, and embraces it.

Councilmember Stern asked staff if all proposed development for this project was still subject to the required geological analysis. City Attorney Hogin responded that was correct. Councilmember Stern stated his concern with not knowing which groups were being represented, and by people who may have not vested interest in the community.

Mayor Pro Tem Barovsky stated there were many misconceptions with the Development Agreement. She clarified that without the Development Agreement the applicant could get more developed square footage. Planning Manager Knight confirmed that to be correct based on a staff prepared constraints analysis of all the sites. Mayor Pro Tem Barovsky stated there were essentially two deals on the table, the Development Agreement or nothing. She stated she would rather the City get something in the deal and at the same time have some control on the development.

Councilmember Jennings stated the discussion related to whether or not the deals were of sufficient quality for the voters to make an informed decision. He stated the issue of needing more time was less than persuasive, and either way the voters decide, the City will have one more park, and one less commercial center. He stated centralized armored wasteater system was easier to protect against any type of rupture. He reminded the public that the Warshall Report talks about certain areas in Malibu, as not being appropriate for private disposal systems.

Mayor Kearsley clarified that his statement of a crapshoot, was made when there was only a Plan A. He stated if the voters reject the development Agreement, Malibu would not have the ability to cleanup the creek, the lagoon and the ocean. He stated the City must move forward on this.

Councilmember House reminded the public of recent projects where the City had not seized any opportunity like this and ended up with more development than originally proposed.

Councilmember Stern discussed the importance to proceed and indicated this was a once in a lifetime opportunity.

City Attorney Hogin advised a motion is in order to continue the item and public hearing open to Thursday July 24, 2003 at 6:30 p.m. in the Council Chambers.

MOTION Councilmember Stern moved and Councilmember House seconded a motion to continue the item with the public hearing to July 24, 2003. The motion carried unanimously.

B. Consideration of Options Regarding the Management of the Proposed Community Center at the Point Dume Site

Staff recommendation: Consider options for operation of the proposed Malibu Community Center at Point Dume, determine if action is required at this time and, is so, direct staff appropriately.

Councilmember House expressed concern that the community was not adequately informed. She stated she does not see the need to take action on this item at this time.

City Manager Lichtig reported a revised agenda for this meeting was posted yesterday, adding this item to the agenda. She stated the posting of the agenda was well within the requirements of the law.

Mayor Pro Tem Barovsky stated she agrees with Councilmember House; however, would be happy to take public testimony.

Beverly Hammond, Board President of the Point Dume Community Services District, stated support of a joint powers agreement with the City of Malibu was an option on the management of the future community center. She discussed the Community Services District's interest in the daily operations of the future center, and the likelihood of receiving bond funding in a joint agreement.

Marlene Matlow requested the item be continued to a future date for further discussion. Councilmember House requested a financial analysis on what a joint powers agreement would cost the City. City Manager Lichtig suggested the matter be continued to the second meeting in September or the first meeting in October to allow the level of analysis requested by the Council. Councilmember House suggested focusing the analysis on the two alternatives discussed. City Manager Lichtig asked if there was any desire of the City Council to have the Parks and Recreation Commission review the proposals. Mayor Pro Tem Barovsky responded no, this is a policy decision.

Pat Greenwood stated her support for the Parks and Recreation Department, and any possible involvement they may have in this management plan.

Marlene Matlow spoke in favor of the Point Dume Community Services District and a job well done.

Councilmember House asked staff to include the possible uses for this center in the analysis.

ADJOURN At 9:57 p.m., Mayor Kearsley moved, seconded by Councilmember Stern to continue the hearing and adjourn the meeting to Thursday, July 24, 2003 in the name of those who lost their lives in Santa Monica and also Malibu resident Bill Dowey. Motion carried without objection.

Approved and adopted by the City Council of the City of Malibu
on October 13, 2003.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)